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## BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DEC 22 2003

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

DOCKETED BY

NR

IN THE MATTER OF THE APPLICATION OF  
BENSCH RANCH UTILITIES, LLC FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE SEWER SERVICE.

DOCKET NO. SW-04026A-01-0499

66650

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATE OF HEARING:

April 16, 2003

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

APPEARANCES:

Mr. Joshua J. Meyer on behalf of Bensch Ranch  
Utilities, LLC; and

Mr. Jason Gellman, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT.

1. On June 21, 2001, Bensch Ranch Utilities, LLC ("Bensch Ranch" or "Company")  
filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of  
Convenience and Necessity ("Certificate" or "CC&N") to provide wastewater service in Yavapai  
County, Arizona.

2. On July 18, 2001, the Commission's Utilities Division Staff ("Staff") filed a letter  
notifying the Company that its application was administratively insufficient. The Company filed an  
amendment to its application on January 15, 2002, and on November 27, 2002, Staff notified the  
Company that the application was administratively sufficient. On November 29, 2002, Staff filed a  
Staff Report on the application recommending approval subject to certain conditions.

1       3. By Procedural Order issued December 5, 2002, this matter was scheduled for hearing  
2 on February 19, 2003. The December 5, 2002 Procedural Order required the Company to publish  
3 notice of the hearing, and to cause the notice to be mailed to all property owners and all entities with  
4 contracts pending to purchase real property in the requested CC&N area, by January 10, 2003.

5       4. By Procedural Order issued February 14, 2003, the hearing was rescheduled for April  
6 16, 2003 due to the Company's failure to provide notice. The Company published notice of the new  
7 hearing date, and the hearing was held as scheduled on April 16, 2003. Following the hearing, the  
8 intervention deadline was extended to May 23, 2003 to allow notice to be mailed to property owners.  
9 No public comment was received prior to the hearing, no members of the public appeared to make  
10 public comment at the hearing, and no requests for intervention or public comments were filed  
11 following the May 8, 2003 mailing of notice to property owners.

12       5. Bensch Ranch is seeking a Certificate to provide sewer service to two planned  
13 residential developments known as Bensch Ranch Estates, LLC ("BR Estates") and Spring Valley,  
14 both of which are located within the community of Mayer, in Yavapai County. At build out, BR  
15 Estates will consist of 411 residential units, and Spring Valley is planned to consist of 50 residential  
16 units and two commercial properties, a small hotel and a convenience store. The legal description of  
17 the proposed service area for Bensch Ranch is set forth in Exhibit A attached to this Order.

18       6. Staff states that there is no capacity available at the existing wastewater plants in the  
19 Mayer area to serve the proposed development service area at this time. Engineering Staff found that  
20 the facility proposed by Bensch Ranch will have adequate treatment capacity to serve the proposed  
21 area within the conventional five-year planning period, and that the Company can reasonably be  
22 expected to develop necessary capacity for the final build-out.

23       7. Bensch Ranch is an Arizona limited liability company formed in November 2000. The  
24 members of Bensch Ranch, John Clingman, Dwight Zemp, Jason Williamson, and Joshua J. Meyer,  
25 are also the members of Pine Meadows Utilities, LLC, which is authorized to provide wastewater  
26 service in portions of Gila County, Arizona pursuant to authority granted by the Commission in  
27 Decision No. 64599 (March 4, 2002). In addition, Bensch Ranch's members are officers and  
28 directors of Sweetwater Creek Utilities, Inc., which provides sewer utility service near Yuma in

1 Yuma County, Arizona pursuant to authority granted by the Commission in Decision No. 59916  
2 (December 10, 1996); and of Verde Santa Fe Wastewater Company, Inc., which was granted  
3 authority to provide wastewater service in various parts of Yavapai County, Arizona in Decision No.  
4 60779 (April 8, 1998).

5 8. According to the application, Pivotal Utility Management, LLC, a Colorado limited  
6 liability company ("Pivotal"), will operate and manage Bensch Ranch. Bensch Ranch's members  
7 John Clingman, Jason Williamson and Dwight Zemp are also the members of Pivotal. Pivotal also  
8 operates and manages Pine Meadows Utilities, LLC, Sweetwater Creek Utilities, Verde Santa Fe  
9 Wastewater Company, and Verde Santa Fe Water Company in Arizona. Pivotal does not currently  
10 have authority to do business in Arizona. Bensch Ranch's witness at the hearing, Jason Williamson,  
11 who is also Pivotal's Executive Director, stated that as a condition of the requested Certificate for  
12 Bensch Ranch, Pivotal is willing to obtain authority to do business in Arizona.

13 9. The Company plans to construct the necessary facilities to serve the requested area  
14 with a combination of debt, equity and contributions in aid of construction. Mr. Williamson testified  
15 that the Company will contribute \$100,000 in equipment, \$85,000 in cash, and approximately  
16 \$24,000 in the form of principal payments on an equipment finance agreement Bensch Ranch has  
17 entered into with Pivotal.

18 10. The developers of BR Estates and Spring Valley will construct the necessary  
19 wastewater collection infrastructure and contribute it and the land in their respective developments to  
20 the Company.

21 11. The planned Spring Valley development is owned by Ray Runyon.

22 12. BR Estates is an Arizona limited liability company formed in 1999. Its managing  
23 members are Lester O. Smith, Jr., Earl A. Petznick, William Fain, and Dale R. Smith. Other  
24 members include Windmill Investments Limited Partnership and Fain Signature Group, LLC. Mr.  
25 Williamson testified that BR Estates is offering lots ranging in size from ¼ acre to 1 ½ acres, and  
26 homes on lots for prices ranging from \$300,000 to \$500,000.

27 13. In Decision No. 66036 (July 3, 2003), the Commission fined American Public Service  
28 Company/Lester O. Smith \$136,500 based on their demonstrated total disregard for the public health

1 and safety in the violation of Commission Orders, rules, and regulations, and ordered that Staff refer  
2 Lester Smith and American Public Service Company to the Maricopa County Attorney or Arizona  
3 Attorney General for review and prosecution of possible misdemeanor and felony violations.

4 14. The Company stated that Lester Smith has no ownership interest or interest in the  
5 profits of the Company. Mr. Williamson stated that part of the reason that BR Estates hired Bensch  
6 Ranch and Pivotal to develop the wastewater facilities for BR Estates is because BR Estates is aware  
7 of the problems Lester Smith has had with the Commission and the Arizona Department of  
8 Environmental Quality ("ADEQ"), and wanted to create a clear delineation between the developer  
9 BR Estates and the entity applying for the CC&N.

10 15. Mr. Williamson testified that the collection lines for the initial phase of BR Estates are  
11 already in the ground, and stated that Bensch Ranch would be willing to provide the Commission  
12 with a copy of ADEQ's Verification of General Permit Conformance (formerly called Approval of  
13 Construction) for that portion of the BR Estates wastewater collection system.

14 16. Staff believes that it is not in the public interest for Lester Smith to be involved in a  
15 certificated utility in the State of Arizona, as he has had two Certificates in the past, both of which  
16 have resulted in protracted environmental and regulatory concerns.

17 17. Staff indicated that the Company's wastewater treatment plant will be constructed in  
18 three phases of 58,650 gallons of capacity each, resulting in a total treatment capacity of  
19 approximately 179,950 gallons at build out. The treatment facilities will consist of wastewater  
20 collection, a Santec four-stage biological oxidization-nitrification process, sludge digestion, sludge  
21 disposal, and effluent disposal.

22 18. Mr. Williamson testified that Bensch Ranch has received a permit from ADEQ  
23 authorizing discharge of the treated effluent into Big Bug Creek.

24 19. According to Staff, wastewater treatment plants at the high level of environmental  
25 sophistication contained in Bensch Ranch's proposal usually cost between \$6.00 to \$8.00 per gallon.  
26 In this instance, the Company has projected the wastewater plant cost for Phase I to be \$360,199, or  
27 \$6.14 per gallon, and an additional build-out cost of \$525,582, or \$5.31 per gallon, divided equally in  
28 Phase II and III, for a total of \$885,781. The \$885,781 figure is reflective of a build-out capacity of

1 175,950 gallons, which brings the overall projected per gallon cost to \$5.03. Staff states that some of  
 2 the costs for future phases are embedded in Phase I (e.g., head works, outfall structures, and some  
 3 piping). Based on its review, Staff concludes that Bensch Ranch's estimated capital requirements are  
 4 reasonable and appropriate.

5 20. Pursuant to the Commission's rules, the Company provided five-year projections for  
 6 plant values, operating revenues and expenses, and number of customers. Such projections are  
 7 necessary to establish rates for new companies due to the lack of historical data. Staff reviewed  
 8 Bensch Ranch's projections and recommended that the Commission find the Company's fair value  
 9 rate base to be \$352,760.

10 21. Staff believes that Bensch Ranch is a fit and proper entity to provide wastewater utility  
 11 service in Arizona and that approval of the application is in the public interest.

12 22. The Company proposed an initial residential flat rate of \$47.00. For commercial  
 13 customers, the Company proposed that the monthly usage charge be calculated by dividing the  
 14 commercial customer's expected design daily sewer flow rate, as calculated under ADEQ rules, by  
 15 one single family equivalent ("SFE") of 300 gallons per day ("gpd"), and by then multiplying the  
 16 resulting factor by the residential flat rate. Staff found the Company's proposed commercial and  
 17 residential rates to be reasonable and recommended approval of those rates, with a 250 gpd SFE. The  
 18 Company's proposed rates and charges for initial sewer service, and Staff's recommendations, are as  
 19 follows:

	<u>Company Proposed</u>	<u>Staff Recommended</u>
<u>MONTHLY USAGE CHARGES:</u>		
Residential – Flat Rate	\$47.00	\$47.00
Commercial –Flat Rate	Unit Daily Design Flow pursuant to A.A.C. Title 18, Chapter 9, Table 1 ÷ one SFE of 300 gpd × residential flat rate	Unit Daily Design Flow pursuant to A.A.C. Title 18, Chapter 9, Table 1 ÷ one SFE of 250 gpd × residential flat rate

27  
 28 SERVICE CHARGES:

1	Establishment	\$35.00	\$35.00
2	Reconnection (Delinquent)	30.00	30.00
3	Deposit (Residential)	2 × flat rate	*
3	Deposit (Commercial)	2 × flat rate	*
4	Deposit Interest (per annum)	3.5%	**
4	Re-establishment (Within 12 Months)	***	***
5	NSF Check	25.00	15.00
5	Late Payment Penalty (per month)	1.50%	****

6 \* Per Commission rule A.A.C. R14-2-603(B)(7) and (8).

7 \*\* Per Commission rule A.A.C. R14-2-603(B)(3).

8 \*\*\* Months off system times the monthly minimum per Commission rule A.A.C. R14-2-603(D)(1).

9 \*\*\*\* Per Commission rule A.A.C. R14-2-608(F)(3).

10 23. ADEQ issued its Decision to Issue an Aquifer Protection Permit to Bensch Ranch  
11 Wastewater Treatment Plant on June 7, 2002.

12 24. Based on the entirety of its review, Staff recommended that the Commission grant  
13 Bensch Ranch's application for a CC&N to provide wastewater services, and further recommended  
14 the following:

- 15 a. That the Commission authorize Bensch Ranch to charge the rates and charges  
16 proposed by Staff on Schedule JF-1 attached to the Staff Report (as set forth  
17 above);
- 18 b. That the Commission find the fair value of the Bensch Ranch's property devoted  
19 to wastewater service to be \$352,760;
- 20 c. That the Commission require Bensch Ranch to notify the Commission within 15  
21 days of providing service to its first permanent customer;
- 22 d. That the Commission require Bensch Ranch to file a rate application no later than  
23 three months following the fifth anniversary of the date the Company begins  
24 providing service to its first customer;
- 25 e. That the Commission require Bensch Ranch to maintain its books and records in  
26 accordance with the NARUC Uniform System of Accounts for wastewater  
27 utilities; and
- 28 f. That the Commission require Bensch Ranch to file all related franchise agreements  
within 365 days of the effective date of this Decision.

25 25. Staff has developed typical and customary depreciation rates within a range of  
26 anticipated equipment life for water and wastewater utilities. Staff recommends that the Commission  
27 require Bensch Ranch to use the depreciation rates by individual NARUC category, as set forth in  
28 Schedule LH-1 attached to the November 29, 2002 Staff Report.

26 26. BR Estates is constructing a portion of the wastewater collection system and will

1 contribute it to Bensch Ranch. A member of BR Estates, Lester Smith, has been found by the  
2 Commission to have demonstrated a total disregard for the public health and safety in violation of  
3 Commission Orders, rules and regulations.

4 27. The formation of Bensch Ranch allowed BR Estates to avoid the need to itself seek a  
5 CC&N to provide sewer service to its development.

6 28. Bensch Ranch has demonstrated a pattern of delays in providing required information,  
7 evidenced by its failure to timely publish and provide notice of the hearing on the application, and  
8 failure to timely provide a correct legal description. Bensch Ranch was unable to adequately address  
9 issues and questions raised by the Commissioners regarding Lester Smith's involvement in this  
10 matter. Given the serious nature of Lester Smith's past violations of Commission Orders, rules and  
11 regulations, which violations have demonstrated a total disregard for the public health and safety, it is  
12 not in the public interest for Lester Smith to be involved in a certificated utility in the State of  
13 Arizona. Bensch Ranch failed to provide adequate assurances that Lester Smith would not have an  
14 ability to exert control over Bensch Ranch functions, and therefore has not demonstrated that it is a fit  
15 and proper entity to receive a CC&N to provide service to the requested area. This application  
16 should therefore be denied.

#### 17 CONCLUSIONS OF LAW

18 1. The Commission has jurisdiction over Bensch Ranch and the subject matter of the  
19 application.

20 2. Notice of the application was provided in accordance with law.

21 3. Bensch Ranch has not demonstrated that it is a fit and proper entity to receive a  
22 Certificate to provide sewer service in the proposed service area.

23 4. Approval of the application is not in the public interest.

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25 ...

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28 ...



**ORDER**

IT IS THEREFORE ORDERED that the application of Bensch Ranch Utilities, LLC for a new Certificate of Convenience and Necessity to provide sewer service to the area in Yavapai County, Arizona described in Exhibit A hereto is hereby denied.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 22<sup>nd</sup> day of December, 2003.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
TW:mlj



1 SERVICE LIST FOR:

BENSCH RANCH UTILITIES, LLC

2 DOCKET NO.

SW-04026A-01-0499

3  
4 Joshua Meyer  
11593 S. Fortuna Rd.  
Yuma, Arizona 85367  
5 Attorney for Bensch Ranch Utilities, LLC

6 Jason Williamson  
Executive Director  
7 Pivotal Utility Management  
6845 East Tennessee Ave., Ste. 401  
8 Denver, Colorado 80224

9 Christopher Kempley, Chief Counsel  
Legal Division  
10 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
11 Phoenix, Arizona 85007

12 Ernest G. Johnson, Director  
Utilities Division  
13 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
14 Phoenix, Arizona 85007

## EXHIBIT A

**BOUNDARY DESCRIPTION  
BENSCH RANCH UTILITIES SEWER SERVICE AREA**

The Bensch Ranch Parcel:

A parcel of land lying within a portion of Section 6, Township 11 North, Range 2 East, and a portion of Section 31, Township 12 North, Range 2 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at a found G.L.O. brass cap at the Northeast corner of G.L.O. Lot 1 of said Section 6 (the Northeast quarter of the Northeast quarter of said Section 6 as recorded in Book 2810 of Official Records, Page 683 in file in the office of the Yavapai County Recorder, Yavapai County, Arizona;

Thence, South  $0^{\circ}00'47''$  West, along the East line of said Section 6, a distance of 2662.89 feet to a found B.L.M. brass cap at the East quarter corner of said Section 6;

Thence, South  $0^{\circ}00'16''$  East, along the East line of said Section 6, a distance of 2649.22 feet to a found B.L.M. brass cap at the Southeast corner of said Section 6;

Thence, North  $89^{\circ}18'10''$  West, along the South line of said Section 6, a distance of 2644.22 feet to a found B.L.M. brass cap at the South quarter corner of said Section 6;

Thence, North  $89^{\circ}15'39''$  West, along the South line of said Section 6, a distance of 1322.82 feet to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 6;

Thence, North  $0^{\circ}06'50''$  West, 2642.94 feet to the Northwest corner of the Northeast quarter of the Southwest quarter of said Section 6;

Thence, North  $0^{\circ}07'17''$  West, 1322.23 feet to the Northeast quarter of the Southeast quarter of the Northwest quarter of said Section 6;

Thence, North  $89^{\circ}25'38''$  West, 1226.10 feet to the Southwest corner of G.L.O. Lot 4 of said Section 6;

Thence, North  $0^{\circ}01'07''$  West, along the West line of said G.L.O. Lot 4, a distance of 1321.21 feet to a found B.L.M. brass cap at the Northwest corner of said Section 6, said B.L.M. brass cap also being the Southwest corner of said Section 31;

Thence, North  $0^{\circ}04'35''$  East, along the West line of said Section 31, a distance of 1185.84 feet to the Northwest corner of G.L.O. Lot 5 of said Section 31;

Thence, South  $89^{\circ}54'32''$  East, 2435.89 feet to the Northeast corner of G.L.O. Lot 6 of said Section 31;

Thence, South  $89^{\circ}46'40''$  East, 2647.92 feet to the Northeast corner of G.L.O. Lot 8 of said Section 31;

Thence, South  $0^{\circ}00'04''$  West, along the West line of said Section 31, a distance of 1206.63 feet to a found G.L.O. brass cap at the Southeast corner of said Section 31;

Thence, South  $89^{\circ}35'12''$  East, 116.32 feet to the POINT OF BEGINNING.

**EXCEPTING THEREFROM** any portion lying within State Highway 69.

Containing 643.58 total acres total, more or less (660.43 ac. less 16.85 ac. for highway right-of-way = 643.58 ac.);

**G. MICHAEL HAYWOOD  
REGISTERED LAND SURVEYOR**



115 East Goodwin Street - Suite E ♦ P. O. Box 1001 ♦ Prescott, Arizona 86302  
Phone 928-778-5101 ♦ Fax 928-778-9321 ♦ email [mhaywoodassociat@qwest.net](mailto:mhaywoodassociat@qwest.net)

**PROPERTY DESCRIPTION  
Spring Valley Unit 2**

**Parcel I**

All of Tract "L", Spring Valley Unit II, as recorded in Book 16 of Maps and Plats, Pages 72 through and including 74, on file in the office of the Yavapai County Recorder; located in a portion of Section 9, Township 11 North, Range 2 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the West One-Quarter corner of said Section 9;

Thence, North 01°09'35" West, 856.45 feet to a point on the West line of said Section 9 and the **POINT OF BEGINNING**;

Thence, continuing North 01°09'35" West, 218.38 feet to a point on the West line of said Section 9;

Thence, North 40°36'57" East, 101.96 feet;

Thence, North 15°13'09" East, 122.20 feet;

Thence, South 52°33'48" East, 24.07 feet;

Thence, South 10°52'18" West, 122.98 feet;

Thence, South 17°54'58" West, 292.41 feet to the **POINT OF BEGINNING**;

Containing 0.353 acres, more or less.

**Parcel II**

All of Tract "K", Tract "N", Tract "O", Lots 831 through and including 851, Lots 860 through and including 867, Spring Valley Unit II, as recorded in Book 16 of Maps and Plats, Pages 72 through and including 74, on file in the office of the Yavapai County Recorder; located in a portion of Section 9, Township 11 North, Range 2 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Spring Valley  
Page 2 of 3

Commencing at the West One-Quarter corner of said Section 9;

Thence, North  $27^{\circ}17'37''$  East (the basis of bearings is North  $01^{\circ}09'35''$  West along the West line of said Section 9), a distance of 433.55 feet to a point on the West line of said Lot 843 and the **POINT OF BEGINNING**;

Thence, North  $28^{\circ}20'34''$  East, 156.46 feet to the beginning of a tangent curve, concave southeasterly with a radius of 150.00 feet;

Thence, northeasterly along said curve through a central angle of  $29^{\circ}58'39''$ , a length of 78.48 feet;

Thence, North  $58^{\circ}19'13''$  East, 257.30 feet to the beginning of a tangent curve, concave northwesterly with a radius of 300.00 feet;

Thence, northerly along said curve through a central angle of  $23^{\circ}09'34''$ , a length of 121.26 feet;

Thence, North  $35^{\circ}09'34''$  East, 114.31 feet to the beginning of a tangent curve, concave southeasterly with a radius of 25.00 feet;

Thence, northerly and easterly along said curve through a central angle of  $90^{\circ}00'00''$ , a length of 39.27 feet;

Thence, South  $54^{\circ}50'21''$  East, 281.78 feet;

Thence, South  $61^{\circ}39'26''$  East, 282.20 feet;

Thence, South  $28^{\circ}20'34''$  West, 155.46 feet;

Thence, South  $16^{\circ}39'26''$  East, 14.14 feet;

Thence, South  $61^{\circ}39'26''$  East, 140.00 feet;

Thence, South  $28^{\circ}20'34''$  West, 300.00 feet;

Thence, North  $61^{\circ}39'26''$  West, 360.00 feet;

Thence, South  $28^{\circ}20'34''$  West, 100.00 feet;

Thence, South  $61^{\circ}39'26''$  East, 360.00 feet;

Spring Valley  
Page 3 of 3

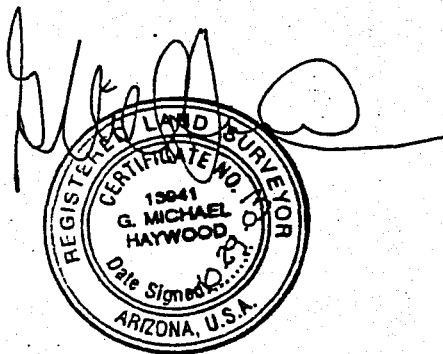
Thence, South  $28^{\circ}20'34''$  West, 105.00 feet to the beginning of a tangent curve, concave northerly with a radius of 25.00 feet;

Thence, southerly and westerly along said curve through a central angle of  $90^{\circ}00'00''$ , a length of 39.27 feet;

Thence, North  $61^{\circ}39'26''$  West, 890.00 feet to the beginning of a tangent curve, concave easterly with a radius of 25.00 feet;

Thence, westerly and northerly along said curve through a central angle of  $90^{\circ}00'00''$ , a length of 39.27 feet to the POINT OF BEGINNING;

Containing 12.388 acres, more or less.



MH1395  
10-29-03

DECISION NO. 66650